

SUPREME COURT OF KENTUCKY

DISCRETIONARY REVIEW GRANTED
(Pending Cases Only)

**DISCRETIONARY REVIEW GRANTED 4/16/08 AND CROSS MOTION
GRANTED 6/11/08**

Calor v. Ashland Hospital Corp., 2007-SC-573-DG and (cross motion)_
Ashland Hospital Corp. v. Calor, 2008-SC-317-DG

Defamation. Qualified Privilege. Interference with Contractual Relations. Instructions. Golden Rule Argument. Damages. In this case involving claims of defamation and interference with contractual relations, issues include whether the “common-interest” qualified privilege was abused; whether defendants were entitled to judgment on grounds of “statements of opinion” and “statements of truth”; whether jury was improperly instructed; whether counsel engaged in improper “Golden Rule” argument to jury; and whether damages awarded were excessive.

Oral argument-March 2009

DISCRETIONARY REVIEW GRANTED 4/15/09

Machniak v. Commonwealth, 2008-SC-352-DG

Criminal Law. Sentencing. Finality of Sentences. Double Jeopardy. At issue is plea agreement in which defendant agreed to increasing sentence if probation terms were violated.

Oral argument-April 2010

DISCRETIONARY REVIEW GRANTED 6/17/09

Blackstone Mining Co. v. The Travelers Ins. Co., 2009-SC-15-DG

Workers Compensation. Rejection Notices. Summary Judgment. Burden of Proof. In controversy between employer and workers' compensation insurer concerning payment of premiums, issues include whether

employee's filed notice of rejection is presumed to be voluntary, placing on the insurer the burden to present evidence that it is not, or whether the employer must prove that the notice is voluntary even in the absence of contrary evidence.

Oral argument-April 2010

**DISCRETIONARY REVIEW GRANTED 6/17/09 AND
CROSS-MOTION GRANTED 8/19/09**

Schnuerle v. Insight Communications Company, L.P.,
2008-SC-789-DG and (Cross-Motion) Insight Communications Company,
L.P. v. Schnuerle, 2009-SC-390-DG

Contracts. Arbitration. Issues include the validity of mandatory dispute resolution contract clauses barring consumer class actions.

Oral argument-May 2010

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
8/19/09**

Reinstedler v. Reinstedler, 2009-SC-88-DG

Dissolution. Nonmarital Property. Gifts. Issue is whether Court of Appeals erred in reversing family court's decision that a gift of property from one spouse's parents was intended as a gift to both spouses.

DISCRETIONARY REVIEW GRANTED 10/21/09

Fischer v. Fischer, 2009-SC-245-DG

Preservation. Contract Law. Issues include whether Court of Appeals' reversal of jury verdict was appropriate where the grounds for reversal were not raised in the trial court.

Oral argument-August 2010

DISCRETIONARY REVIEW GRANTED 1/13/10

Nash v. Campbell County Fiscal Court, 2009-SC-152-DG

Real Estate. Zoning. Agricultural Supremacy. Issues include the constitutionality of county ordinances attempting to regulate transfers of agricultural land in order to close perceived subdivision loopholes in KRS 100.203(4) and KRS 100.111(22).

Oral argument-September 2010

Hospital of Louisa v. Johnson County Fiscal Court, 2009-SC-280-DG
Jails. Costs of Prisoner Medical Treatment. Bail. At issue is a county's liability for medical care of a prisoner released on an unsecured bond and ordered to seek medical care and report back to jail upon its completion.

Oral argument-August 2010

Cook v. Popplewell, In Her Capacity as County Clerk of Russell County, 2009-SC-341-DG

Constitutional Law. Elections. Employment discrimination. Issues include whether a 1st or 14th Amendment liberty interest protects public employees from being fired for candidacy for public office and whether county officials sued officially are immune from § 1983 actions.

Oral argument-September 2010

Wells Fargo Bank v. Commonwealth, Finance and Administration, 2008-SC-0419-DG, and Central Bank v. Commonwealth, Finance and Administration, 2008-SC-0427-DG

Taxation. Liens. KRS 134.420. At issue is priority of tax liens.

Oral argument-September 2010

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
1/13/10

Day v. Commonwealth, 2009-SC-641-DG

Criminal Law. Jury Question. Evidence of Flight. Chain of Custody. Discovery. Prosecutorial Misconduct. The issues are: 1. whether the trial court erred by answering a jury question requesting the penalty range for a lesser-included-offense during guilt phase deliberations; 2. whether the trial court erred by admitting evidence regarding the defendant's move to West Virginia as "flight" evidence; 3. whether the trial court erred by admitting forensic evidence where the Commonwealth could not demonstrate a chain of custody and the Commonwealth failed to timely turn over discovery regarding this evidence; and 4. whether the prosecutor's comments were an improper appeal to local sympathy.

DISCRETIONARY REVIEW GRANTED 3/10/10

Commonwealth v. Johnson, 2009-SC-589-DG

Criminal Law. Flagrant Nonsupport. Probation Revocation Hearing. At issue is whether a defendant's legitimate inability to make child support payments, required as a probation condition, may be considered prior to revoking probation for failure to make the payments.

Oral argument-April 2011

Bailey v. Preserve Rural Roads of Madison County Inc., 2009-SC-417-DG

County Roads. KRS 178.116. Issues include respondents' standing to seek the resumption of county maintenance and removal of gates installed by movant where landowners who access their property via road discontinued as a county road have not petitioned jointly to close the road to public use.

Oral argument-September 2010

DISCRETIONARY REVIEW GRANTED 12/10/09 AND CROSS-MOTION GRANTED 3/10/10

University Medical Center, Inc. etc. v. Beglin, 2009-SC-289-DG and (Cross-motion) Michael G. Beglin, Executor of the Estate of Jennifer W. Beglin, et al., v. University Medical Center, 2009-SC-839-DG

Personal Injury. Jury Instructions. Missing evidence. Issues include propriety of giving spoliation instruction and other evidentiary and instructional rulings.

Oral argument-December 2010

Giddings & Lewis, Inc. v. Industrial Risk Insurers, 2009-SC-485-DG and (Cross-Motion) Industrial Risk Insurers v. Giddings & Lewis, Inc., 2009-SC-825-DG

Products Liability. Negligence. Property Damages. Issues include whether Kentucky should adopt the Economic Loss Rule.

Oral argument-December 2010

DISCRETIONARY REVIEW GRANTED 4/15/10

Hallum v. Commonwealth, 2009-SC-0762-DG, *to be heard with* Jones v. Commonwealth, 2010-SC-0049-DG

Appellate Procedure. Belated Appeals. At issue is whether doctrine of equitable estoppel, or prison mailbox rule, should allow belated filing of

appeal when documents were delivered to prison mailroom prior to filing deadline but were not marked as tendered by clerk until after deadline.

Oral argument-June 2010

DISCRETIONARY REVIEW GRANTED 6/9/10

Goldsmith v. Commonwealth, 2009-SC-768-DG

Criminal Law. Probation Revocation. Issues relate to the probation revocation process and the length of sentence imposed, specifically three consecutive five-year terms for Class D felonies, to be served consecutively with similar terms in a neighboring county.

Oral argument-June 2011

DISCRETIONARY REVIEW GRANTED 8/18/10

St. Luke Hospital v. Straub, 2009-SC-27-DG

Violation of State Due Process Rights. Statute of Limitations. Issue preclusion. Torts. Issues include: 1. whether KRS 446.070 creates a cause of action for a violation of state constitutional rights; 2. whether federal litigation in a §1983 action precludes state litigation; 3. whether the statute of limitations was observed; 4. whether KRS 413.270 applies; 5. whether the trial court erred by failing to answer jury questions during deliberations; 6. whether the trial court incorrectly admitted evidence of the plaintiff's prior drug and profanity use, and 7. whether the plaintiff is entitled to punitive damages.

Oral argument-March 2011

Barker v. Commonwealth, 2010-SC-116-DG

Probation Revocation. The issue is whether the trial court properly revoked the defendant's probation based on his arrest for another felony prior to any conviction for said felony.

Oral argument-May 2011

DISCRETIONARY REVIEW GRANTED 5/12/10 and CROSS- MOTION GRANTED 8/18/10

Commonwealth v. Marshall, 2009-SC-229-DG **and** (Cross-Motion)

Marshall v. Commonwealth, 2010-SC-348-DG

Criminal Law. Probation Revocation. Flagrant Nonsupport. Issues involve the adequacy of factual findings in support of probation revocation for

flagrant nonsupport, a charge contested on the merits as grounded upon legitimate inability to make agreed child support payments as ordered as a probation condition.

Oral argument-April 2011

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
8/18/10

D.G.R. and T.B.H. v. Commonwealth of Kentucky, Cabinet for Health and Family Services, 2010-SC-100-DGE

Termination of Parental Rights. Evidentiary Sufficiency. In a case in which the circuit court denied termination of parental rights, did clear and convincing evidence require the opposite result?

DISCRETIONARY REVIEW GRANTED 9/15/10

Commonwealth v. Jones, 10-SC-123-DG

Criminal Law. Probation Revocation. Self Incrimination. Use Immunity. The issue is whether the trial court's failure to continue the probation revocation hearing until the Commonwealth obtained a conviction on the new substantive offense which was the basis for requesting revocation or alternatively grant the defendant "use immunity" unconstitutionally forced the defendant to choose between asserting his right against self incrimination and his right to present a meaningful and complete defense.

Oral argument-May 2011

Shawnee Telcom Resources v. Brown, 2009-SC-574

Dissenter's Rights. Corporations. The issue is by what method the trial court should value the dissenting shareholder's stock shares.

Oral argument- April 2011

DISCRETIONARY REVIEW GRANTED 10/13/10

Jackson v. Commonwealth, 2009-SC-115-DG

Criminal Law. Juvenile Code. Jurisdiction. Preservation.

Issues include whether a guilty plea waives juvenile's right to later challenge transfer from juvenile court to circuit court or whether the issue is one of subject matter jurisdiction; And whether transfer based upon an

“enhanced charge” because of juvenile’s possession of firearm was improper.

Oral argument-April 2011

Commonwealth v. Peters, 2010-SC-74-DG

Criminal Law. Discovery. Judicial Discretion. Issues include whether trial court has authority to compel the attendance of a witness at a pretrial conference.

Oral argument-June 2011

The Dreamers, LLC v. Don’s Lumber and Hardware, 2010-SC-227-DG

Materialman’s Lien. Appellate Procedure. The issue is whether an appeal is properly dismissed when the defendant pays in full the amount owed under the final judgment instead of getting a supersedeas bond.

Oral argument-March 2011

State Farm Mutual Auto Insurance v. Baldwin, 2010-SC-144-DG

Uninsured Motorist Coverage. The issue is whether a tarp hitting a truck is a “strike” covered by the uninsured motorist policy.

Oral argument-August 2011

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
10/13/10

Younger v. S.D. Environmental, Inc., 2009-SC-814-DG

Appeals. Civil Procedure. Issues include whether the trial court’s grant of CR 60.02 relief may be overturned by appellate court in a ruling that dismisses the appeal as untimely.

DISCRETIONARY REVIEW GRANTED 11/10/10

Turner v. Nelson, 2010-SC-356-DG

Torts. Negligent Supervision. Issues include whether a civil cause of action can be grounded upon a teacher’s failure to report (pursuant to KRS 620.030) the alleged inappropriate touching of a five-year-old girl by another five-year-old girl at school.

Oral argument-April 2011

Woodson v. Woodson, 2010-SC-53-DG

Domestic Relations. Maintenance. Issues include whether the rule set out in *Dame v. Dame*, 628 S.W.2d 625 (Ky. 1982), that lump sum maintenance is not modifiable should be revisited.

Oral argument-April 2011

Benningfield v. Zinmeister, 2009-SC-660-DG

Animal control. KRS 258.235(4). Issues include whether a landlord is strictly liable as a KRS 258.095(5) "owner" for injuries inflicted by a tenant's dog and, if so, whether the liability extends to injuries inflicted off the leased premises.

Oral argument-May 2011

DISCRETIONARY REVIEW GRANTED 12/8/10

Interlock Industries, Inc. v. Rawlings, 2010-SC-264-DG

and Rosenman's Inc. v. Rawlings, 2010-SC-352-DG

and Kentucky Flatbed Company, LLC v. Rawlings, 2010-SC-368-DG

Statute of Limitations. Personal Injury. MVRA. Issues include whether the KRS 413.140(1) one-year personal injury statute of limitations or the KRS 304.39-230 two-year MVRA statute of limitations applies to the injury suffered by a trucker when he was struck by part of his load of aluminum bundles as he was rolling up tie-down straps beside the flatbed truck being unloaded.

Oral argument-August 2011

Inter-Tel Technologies, Inc v. Linn Station Properties, LLC,
2009-SC-819-DG

Corporations. Issues include the permissibility of piercing the corporate veil of a grandparent corporation to collect on a default judgment against the subsidiary corporation.

Oral argument-August 2011

Commonwealth of Kentucky, Cabinet for Health and Family Services v. Ivy,
2010-SC-527-DGE

Child Support. Contempt of Court. Issues include the amount of child support as well as arrearages to be paid by a non-custodial parent receiving SSI benefits.

Hashmi v. Kelly, 2009-SC-0843-DG

Medical Malpractice. Expert Witnesses. Witness Disclosure. Issues include the admissibility of expert witness testimony by the defendant where the plaintiff took expert's deposition but defendant failed to disclose his intent to utilize deposition as expert testimony.

Singleton v. Commonwealth, 2010-SC-0078-DG

Criminal Law. Search and Seizure. Vehicle Checkpoint. Issues include the constitutionality of vehicle checkpoint established to check compliance with city ordinance that required all residents of the city and all those working in the city to display a sticker on their vehicles.

Fuel Transport v. Gibson, 2010-SC-72-DG & 2010-SC-682-DG

Negligence. Personal Injury. Damages. This case involves a collision between a car and a coal truck. The issues include: 1. Whether punitive damages are available; 2. Whether the damages awarded by the jury were excessive; 3. Whether juror misconduct warrants a new trial; 4. Whether the trial court gave erroneous jury instructions and the objections to these instructions were not waived; 5. Whether the trial court erred by failing to change venue; 6. Whether a party has waived the right to challenge errors related to compensatory damages, and 6. Whether the trial court erred by awarding post-judgment interest at 12%.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT **12/8/10**

Priddy v. Commonwealth, 2010-SC-0041-DG

Criminal Law. Alford Plea. Issues include whether a defendant's Alford plea was entered knowingly and voluntarily upon a consultation of less than three minutes with his attorney.

DISCRETIONARY REVIEW GRANTED 1/14/11

Dotson v. Commonwealth, 2010-SC-222-DG

Criminal Law. Post-Conviction. RCr 11.42. The issue is whether a defendant who has served out his sentence prior to the lower courts' adjudication of his post-conviction claim can proceed with his case or are the issues moot thus meriting a dismissal of the claims. The Court has been invited to re-examine its ruling in *Parrish v. Commonwealth*, 283 S.W.3d 675 (Ky. 2009)

Bonar, et. al. v. Waite, Schneider, Bayless, & Chesley, et. al, 2010-SC-87-DG

Class Action Litigation. Attorneys' Fees. The issues include whether and to what extent a former class action co-counsel is entitled to recover fees following settlement of the class action lawsuit.

Anderson v. Johnson, 2010-SC-646-DGE

Child Custody. Modification. Issues include whether factual findings are required in ruling upon post-dissolution motions to modify parental timesharing to accommodate relocation of one joint custodian.

Oral argument-May 2011

Keifer v. Keifer, 2010-SC-694-DGE

Child Custody. Modification. Issues include whether factual findings are required in ruling upon post-dissolution motions to modify parental timesharing to accommodate relocation of one joint custodian.

Oral argument-May 2011

Reynolds v. Safeco Insurance Company of Illinois, 2010-SC-665-DG

Uninsured Motorist Coverage. The issue is whether a naturally occurring condition, specifically a chunk of ice allegedly breaking off of a truck and smashing the insured's windshield, is a "hit" covered by the insured's motor vehicle insurance policy.

Oral argument-August 2011

DISCRETIONARY REVIEW GRANTED 3/16/11

K.R. v. Commonwealth, 2010-SC-76-DG

Juvenile. Criminal Law. Issues include the propriety of granting a writ of mandamus to compel transfer of a juvenile to circuit court based upon KRS 635.020(4).

TECO Mechanical Contractor, Inc v. Commonwealth, Environmental and Public Protection Cabinet, 2009-SC-821-DG

Constitutional Law. Prevailing Wage Act. Issues include constitutional challenges to the prevailing wage laws, KRS 337.505-337.550.

Kentucky Southern Coal Corporation v. Kentucky Energy and Environment Cabinet, 2010-SC-29-DG

Administrative Agency Law. Issues include whether the Cabinet acted arbitrarily in denying Kentucky Southern Coal Corporation's application to renew a mining permit for certain land.

Commonwealth v. Steadman, 2010-SC-326-DG

Criminal Law. Restitution. Jurisdiction. The question presented is whether a defendant can consent to a delay in a restitution hearing and disposition beyond ten days after entry of final judgment.

Carter v. Smith, 2010-SC-295-DG

Open Meetings. Exceptions. Personnel and Litigation. Issues involve the applicability of the personnel and litigation open meetings exceptions to a closed school board meeting considering potential resignation of a school superintendent as well as his potential subsequent retention on a 12-month consulting contract.

Maynes v. Commonwealth, 2010-SC-681-DG

Criminal Law. Indigent or Needy Person. Court Costs.

The issue is whether the trial court can order a defendant, previously found to be indigent, to pay court costs as part of defendant's final sentencing.

Hancock v. Prestonsburg Industrial Corp., 2010-SC-376-DG

Charitable Organizations. Tax Exemptions. The issue is whether Prestonsburg Industrial Corporation ("PIC") is a charitable organization under Kentucky Constitution § 170 and thus exempt from ad valorem taxes.

Daughtery, now Butcher v. Telek, 2011-SC-43-DGE

Emergency Protective Orders. Domestic Violence Orders. Time for Hearing. The issue is whether statutory time frames involve general subject matter jurisdiction, which cannot be waived, or are jurisdictional aspects of the particular case, which can be waived by a party.

Commonwealth v. O'Connor, 2010-SC-343-DG

Criminal law. First-Degree Criminal Abuse. The issue is whether the Commonwealth presented sufficient evidence to support a verdict for

intentional abuse where the defendant argued the acts toward the children were the result of poverty and poor parenting skills.

Ky. Unemployment Insurance Commission v. Cecil, 2010-SC-349-DG
Unemployment Benefits. KRS 341.370(6). The issues are: 1. Whether the “willful and wanton” standard still applies to specific misconduct enumerated under KRS 341.370(6), and 2. Whether the Water Company’s instruction to Cecil to sign a “last chance” employment agreement was reasonable.

DISCRETIONARY REVIEW GRANTED 4/13/11

Stilger v. Flint, 2010-SC-120-DG
Immunity. Defamation. The issue is whether statements made in response to a request the Attorney General investigate a case are subject to an absolute or qualified privilege where a party alleges defamation.

Cox v. Commonwealth, 2010-SC-733-DG
Criminal Law. Ineffective Assistance of Counsel. The question presented is whether the ineffective assistance logic concerning deportation circumstances in Padilla v. Kentucky, 130 S.Ct. 1473 (2010) extends to alleged misadvice of guilty plea counsel as to the impact of the sex offender treatment program upon parole eligibility

Mortgage Electronic Registration Systems v. Roberts, 2010-SC-69-DG
Mortgages. Judgment Liens. Equitable Subrogation. Issues include the prioritization of liens in a foreclosure action.

Wade v. Pomo Glass & Specialty Windows, 2010-SC-572-DG
Statute of Limitations. Judgments. Issues include how broadly to construe the word “execution” as used in KRS 413.090, the statute of limitations applicable to judgments.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 4/13/11

Hudson v. Hudson, 2010-SC-91-DGE
Child Support. Modification. The question presented is whether Artrip v. Noe, 311 S.W.3d 229 (Ky. 2010) applies although not argued in briefing on

appeal subsequent to the finality of that decision holding that a non-disabled parent is not entitled to a credit against that parent's child support obligation for Social Security disability payments to a child premised upon the other parent's disability.

DISCRETIONARY REVIEW GRANTED 5/11/11

Prather v. Bryant, 2010-SC-375 -DG

District Court Jurisdiction. Settlements. KRS 387.520(1). KRS 24A.120. Writ of Prohibition. Issues include interpretation of KRS 387.520(1) and KRS 24A.120 and the extent of the District Court's jurisdiction and authority regarding settlements in guardianship cases.

Wilson v. City of Central City, 2010-SC-394 -DG

"Whistleblower Act, KRS 61.102. Issues include whether municipalities and their employees are subject to the provisions of the Whistleblower Act.

Commonwealth v. Pridham, 2011-SC-126-DG

Criminal Law. Ineffective Assistance of Counsel. Issues include whether erroneous advice concerning parole eligibility may constitute ineffective assistance of counsel under *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010).

Stiger v. Commonwealth, 2008-SC-864-DG

Criminal Law. Ineffective Assistance of Counsel. Issues include whether erroneous advice concerning parole eligibility may constitute ineffective assistance of counsel under *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010).

